

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LUIS CONTRERAS and
SUSANA LaCASA CALIZ,

Petitioners,

v.

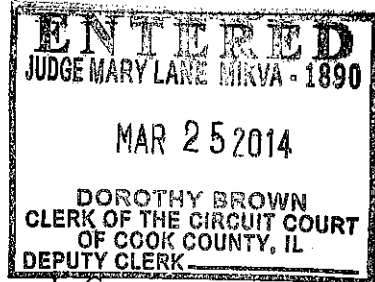
GARRY McCARTHY, Superintendent of
the Chicago Police Department, and
THE POLICE BOARD OF THE CITY OF
CHICAGO,

Respondents.

No. 13 CH 14320

Judge Mary L. Mikva

Calendar 6



ORDER AND OPINION

This case comes to the Court on Officer Luis Contreras and Officer Susana LaCasa Caliz's Petition for Writ of Certiorari seeking review of the Police Board of the City of Chicago's decision to terminate their employment. For the following reasons, the Board's decision is AFFIRMED.

Background

Officers Luis Contreras and Susana LaCasa Caliz ("Petitioners") were discharged from the Chicago Police Department on April 18, 2013 for violating multiple Rules of Conduct. The factual background, as set forth in the Findings and Decision of the majority of the Police Board, is as follows.

On March 19, 2011, Officers Contreras and Caliz assisted Officer Michael Edens and his partner with a call involving gang members in gang territory known to be controlled by the Imperial Gangsters. When the Petitioners arrived, there were four individuals in handcuffs and Officer Edens and his partner were taking their information. The Petitioners did not interact with the handcuffed individuals. No arrests were made.

The Petitioners drove one of the individuals, fourteen-year-old Miguel Castillo ("Castillo"), from the scene to the 1600 block of North Spalding Avenue in Chicago, which is in Latin Kings gang territory. The Latin Kings are a rival gang to the Imperial Gangsters. After Petitioners and Castillo arrived on the 1600 block of North Spalding, an onlooker recorded Castillo in the back of the Petitioners' police cruiser with the passenger-side-door open. The approximately ninety-second video was later posted on YouTube. A large group of young men

gathered around the cruiser, shouting taunts at Castillo while the Petitioners stood by and observed. In the video, some young men appear to get very close to the cruiser and Castillo's face is clearly visible. Officer Caliz can be heard using expletives to tell Castillo to put his hands down from his face. Some of the young men shouted "King Love" and others made Latin King gang signs with their hands. Eventually, the young men were on all sides of the cruiser and the Petitioners. Toward the end of the video, Officer Contreras opens the other passenger door and young men are behind him, close to the open cruiser. The video ends before the Petitioners departed, but they testified that they returned Castillo to where they had picked him up.

At the hearing before the Police Board, the Petitioners and Officer Edens testified. The Petitioners testified that they had never met Castillo previously and that Officer Edens told them that Castillo lived at the location where they drove Castillo. Petitioners testified that they were just following Officer Edens' request that they take Castillo home, they did not know Castillo was an Imperial Gangster and they had no way of knowing he did not live at the address Officer Edens gave them.

Officer Edens testified that he did not tell Petitioners to take Castillo anywhere. He testified that Officer Contreras asked if Castillo lived near Spaulding and LeMoyne and Officer Edens jokingly responded that he lived at 1629 North Spaulding and chuckled. That specific address was either similar to or identical to where a Latin King leader lived. Officer Edens testified that he did not think Officer Contreras had been serious or had taken him seriously. The majority of the Board found Officer Edens more credible than the Petitioners.

Merlyn Vega ("Vega"), a witness to the incident on North Spaulding, also testified. She stated that she saw the Petitioners pull up in front of her home and approach her mother and father. She did not hear what was said, but she recalled the events in the video occurred approximately three or four minutes after the Petitioners arrived. This testimony contradicts Officer Caliz's testimony that the Petitioners had arrived approximately fifteen-seconds before the events on the video began. Vega testified that the young men were Latin Kings, that they came running toward the police cruiser when Petitioners opened the back door and that even though her windows were closed she could hear someone yelling, "To let him out." She testified, however, that the Petitioners never took Castillo out of the car and the entire incident lasted about ten minutes. The Board found Vega's testimony credible.

A number of character witnesses testified in support of the Petitioners. Some were community organizers who testified that the Petitioners had helped make neighborhoods safer; others were officers and former co-workers who had nothing but praise for the Petitioners. The Board additionally reviewed Petitioners' extensive list of awards and commendations. The witnesses and the awards praising the Petitioners' knowledge of gangs, however, contradicted Petitioners' testimony that they did not recognize gang signs in the video.

Officer Contreras also testified that he did not know what Latin King and Imperial Gangster gang signs looked like. But he was impeached with prior deposition testimony in which he testified that he did know the gang signs. He then testified that he and Officer Caliz returned Castillo to where they had picked him up, but he avoided saying he did not think it was safe to leave Castillo with the Latin Kings, until confronted with prior testimony that it was not safe and best for them to leave the area.

Based on the evidence, a majority of the Board determined that both Petitioners were guilty of violating:

Rule 1: "Violation of any law or ordinance," by committing the offense of unlawful restraint when they held and transported Castillo without valid legal authority;

Rule 2: "Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department," by committing the offenses of:

- 1) knowingly detaining Castillo and transporting him without a valid police purpose;
- 2) knowingly and intentionally remaining on the 1600 block of North Spaulding with the cruiser's doors open and allowing gang members to threaten Castillo;
- 3) allowing gang members to record video of Castillo; and
- 4) failing to exhibit officer safety by allowing gang members to encircle them;

Rule 6: "Disobedience of an order or directive, whether written or oral," by failing to inform dispatch of a change in location;

Rule 8: "Disrespect to or maltreatment of any person, while on or off duty," by transporting Castillo and allowing gang members to threaten him;

Rule 10: "Inattention to duty," by taking no action after gang members threatened Castillo with bodily harm; and

Rule 14: "Making a false report, written or oral," by telling the Bureau of Internal Affairs that Officer Edens had told them to take Castillo home to the 1600 block of North Spaulding.

Additionally, a majority of the Board found that Officer Caliz violated Rule 8 when she told Castillo to “put your [expletive deleted] hands down” from his face.

Seven members of the nine-member Board determined that cause existed for discharging Officer Contreras from his position as a police officer. Six members of the Board determined that cause existed for discharging Officer Caliz.

At least five members of the Board agreed completely with the majority opinion that Petitioners violated each rule. Four members of the Board, including the President and the Vice President, dissented in whole or in part from the majority’s findings. The dissenters did not think that all of the violations were proven as to both Petitioners. Some were not persuaded that Petitioners knew Castillo did not actually live on the 1600 block of North Spaulding, nor did they find Officer Edens credible. As noted above, some of the dissenters did not think discharge was warranted.

Petitioners timely filed for judicial review.

Analysis

Judicial review of the Board’s discharge decision is a two-step process. *Walsh v. Bd. of Fire & Police Comm’rs*, 96 Ill. 2d 101, 105 (1983). First, the court determines whether the Board’s factual findings are against the manifest weight of the evidence. *Id.* Second, the court determines if the factual findings provide a sufficient basis to support cause for discharge. *Id.*

I. The Board’s Findings Are Not Against the Manifest Weight of the Evidence

A reviewing court generally defers to an administrative agency’s findings of fact since they are deemed to be *prima facie* true and correct. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 668 (1st Dist. 2011). This Court may only determine whether the Board’s findings were against the manifest weight of the evidence. *See Launius v. Bd. of Fire & Police Comm’rs*, 151 Ill. 2d 419, 427–28, 438 (1992).

The Board’s findings were not against the manifest weight of the evidence. Petitioners argue that the Board was wrong to credit Officer Edens’ testimony over Petitioners’ testimony. However, the Court cannot disturb the Board’s credibility findings unless they are against the manifest weight of the evidence. *See In re Austin W.*, 214 Ill. 2d 31, 56–57 (2005).

Moreover, the hearing transcript makes clear that Petitioners were evasive during questioning, and Officer Contreras’ testimony was impeached. While the Court agrees with Petitioners that Officer Edens’ testimony was contradictory and self-serving, this is not

inconsistent with the majority's finding that Petitioners were not credible when they claimed not to be aware that they were driving Castillo into rival gang territory or to recognize the gang signs that were being made.

Petitioners argue that, because Castillo did not testify, the Board cannot infer that Petitioners were restraining him against his will. The Court cannot disturb the Board's reasonable inferences simply because other inferences are plausible. *See Martin v. Thompson*, 195 Ill. App. 3d 43, 49 (1st Dist. 1990). The inferences drawn by the Board were reasonable. In addition to the circumstantial evidence that that Petitioners drove Castillo to the 1600 block of North Spaulding with knowledge that they were transporting him into rival gang territory, the video shows that, after they arrived, Petitioners and Castillo were surrounded by people flashing gang signs and taunting Castillo. The video also shows that the cruisers' doors remained open for over a minute while the officers stood by and watched, yelling only at Castillo when he was obviously frightened.

In short, the Board's factual findings are not against the manifest weight of the evidence.

II. The Board's Findings Support Cause for Discharge

The Board's finding of "cause" for discharge can be overturned only if it is arbitrary and unreasonable or unrelated to the requirements of the service. *Walsh*, 96 Ill. 2d at 105.

Petitioners are correct that if all they had been found guilty of were a failure to notify dispatch that they were leaving the scene of the original call for assistance and transporting Castillo elsewhere, discharge would not be warranted. Everyone questioned about this practice testified that the Petitioners' transport, without reporting a change in location, was routine. However, the Petitioners' failure to report was only one of many violations found, the others of which were far more serious.

The Court agrees with Petitioners that it is sad that many years of what appears to be outstanding service to the Department is apparently outweighed by their unfortunate decisions on March 19, 2011. Yet, the Court cannot find that the Board's decision to terminate Petitioners was either arbitrary or unreasonable, in light of the serious violations and the public nature of the offenses that undermined the public's trust in the police force.

Conclusion .

IT IS HEREBY ORDERED:

- i. The Board's factual findings are not against the manifest weight of the evidence and are AFFIRMED.
- ii. The Board's decision that Petitioners' conduct constituted cause for discharge is AFFIRMED.
- iii. The status set for March 27, 2014 at 9:45 a.m. is STRICKEN.
- iv. This is a final and appealable order.

ENTERED:

Mary L. Mikva 1890

Judge Mary L. Mikva
Circuit Court of Cook County, Illinois
County Department, Chancery Division

